U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 27 2017

LAWRENCE K. BAERMAN, CLERK
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

1:17-cv-226

Thomas Glass

Plaintiff,

Willful Misconduct (LEK/CFH)

--against--

State of New York Supreme Court, Appellate Division &
Erica Putnam Little, Officer of the Court And
Kimberly E. Burns, Officer of the Court
in their official Capacity

Defendants,

JURISDICTION AND VENUE

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1652.and may exercise supplemental jurisdiction over the claims based on New York law pursuant to 28 U.S.C. § 1652.

Claim for Relief

Cause of Action
Willful Misconduct

1. Around or about March 16, 2016, plaintiff filed a brief and appendix in New York State Supreme Court, Third Dept. pursuing an appeal of a decision issued by the lower court at new York state supreme court.

2. Plaintiff brief was rejected by the both defendants clerk of the court on June 1st. For reasons..... (see Exhibit a)

Brief needs a:
Title page,
Table of contents,
CPLR 5531 statement,
Notice of appeal,
Order on appeal,
Papers consider by Judge Platkins when order was rendered,
Pages must be numbered, corresponding to table of content,
Filing fee of $315.00,
And, the adversary stipulating to the correctness of the record on appeal, signed,

Appendix needs:
Notice of appeal,
Order on appeal,
Table of content, numbered in a single consecutive series......

3. On December 10th 2016, plaintiff made the required correction to "perfect the appeal", resubmitted the original with nine copies with 10 copies of the record on appeal to the clerk of the courts(see exhibit b)

4. State of New York Supreme Court rules of practice, part 800 states….. appellant has 3 options to certify the record (pursuant part 800.7, certificate of record) on appeal which the clerk of the court advised that the plaintiff should move to stipulation of the record on appeal which requires plaintiff to send the adversary a copy one copy of the record on appeal from lower court for review and a signature acknowledge stipulating to the correctness of the record

State of New York Supreme Court, appellate division rules of practice, part 800.7(a) certification of record states...reproduced full record. A reproduced full record shall be certified either by (1) actions certificate of appellant's or Petitioner's attorney pursuant to CPLR 2105, (2) actions certificate of the proper clerk, or (3) a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "original record ". (See exhibit c)

Pursuant 28 usc 1652: state laws as rules of decision, part 5(111) the laws of the several states, except where the Constitution or treaties of

the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in anywhere they apply.

5. Plaintiff moved for option 2 which the lower court clerk can certified the record on file, **plaintiff was not successful requesting the adversary to stipulation the record,** the certificate was included in the appendix by reviewing the case docket for original filings and certified court copies to the correctness of the record **(see exhibit e)**

6. The defendant filed a notice to plaintiff stating... The acknowledging of the original and nine copies of the brief and appendix (appendix includes record on appeal), please be advised, before the matter will be placed on a term of the court it is necessary for plaintiff to file a single copy of a stipulated recording appeal, with request for an extension of time to perfect the appeal pursuant to section 800.12 setting forth both a reasonable excuse for the delay and fact showing merit to the appeal, and the filing fee of $315.00 (see exhibit b)

7. Plaintiff, requesting to verbally communicate with the clerk of the court to brief the clerk on what is included within the original and nine copies of the brief and appendix(appendix includes record on appeal)

8. The plaintiff arranged a date and time to verbally communicate with the clerk and advised the clerk that the brief and appendix is accompanied with an order from the court appealed (State of New York Court of Appeals) from stating... The plaintiff is order to file appeal process at the third dept. And proceed without court cost which is accompanied with the proper clerk certification (see exhibit d, f)

9. The clerk of the court advised plaintiff that option 2 does not satisfy the court , in order for the clerk to accepted the appeal and schedule for term of court, the plaintiff must only stipulate to the correctness of the record which is option 3 pursuant part 800.7(a)(3)of the rules of practice

10. Defendants continues to deprive plaintiff of constitutional rights, refusing to process the case for term of court

REQUESTS FOR RELIEF

WHEREFORE the Plaintiff respectfully requests that the Court:

1. Assume jurisdiction over this matter;
2. Declare that Defendants' acts and omissions violated the rights of plaintiff under the Fourteenth Amendment Equal Protection Clause;
3. Declare that Defendants' acts and omissions violated the rights of plaintiff under the Fourteenth Amendment Due Process Clause;
4. Declare that Defendants' acts and omissions violated the rights of plaintiff under the New York State Constitution's Due Process Clause;
5. Plaintiff needs the case to proceed under court rules of practice, ultimately seeking vindication of a traffic citation issued in error,
6. Grant any other relief the Court deems appropriate

Thomas Glass
3 Millpaint Ln, Apt 1c
Owings Mills, MD 21117
305-319-0094

Exhibits

1. Exhibit a: Letter 1 from clerk of the court

2. Exhibit b: Letter 2 from clerk of the court

3. Exhibit c: Court Rules of Practice, part 800

4. Exhibit d: Order, from court appealed from
   State of New York, Court of Appeals

5. Exhibit e: Letter 3 from the adversary
   State of New York, Office of the Attorney General

6. Exhibit f: Certification of records from proper clerk

State of New York
Supreme Court, Appellate Division
Third Judicial Department
Clerk's Office
P.O. Box 7288, Capitol Station
Albany, NY 12224-0288

COPY

(518) 471-4777
fax (518) 471-4750
http://www.nycourts.gov/ad3

Robert D. Mayberger
Clerk of the Court

Erica Putnam Little
Managing Attorney

June 1, 2016

Thomas Glass
3 Millpaint Lane
Apt. 1C
Owings Mills, MD 21117

Re: #522967 - Matter of Glass v New York State Dept. of Motor Vehicles

Dear Mr. Glass:

Returned herewith are your appellant briefs and other loose papers, which may be a proposed record on appeal. Please be advised, it is necessary for you to filed a stipulated record on appeal before this matter will be scheduled for a term of court.

The record on appeal must have a title page, table of contents, CPLR 5531 Statement, notice of appeal, order on appeal, as well as the papers considered by Judge Platkin when the order was rendered. Each page of the record must be numbered in a single consecutive series (1, 2, 3 etc.) and correspond to the table of contents. Once you have prepared your proposed record on appeal, send a copy to your adversary with notice asking the stipulation as to the correctness of the record be signed.

Appellant's briefs must also include a title page and a table of contents which lists your argument(s). If you are perfecting this appeal by the filing of an original and nine copies of a stipulated record on appeal, cite to the pages of the record. Or if you are perfecting by the filing of a single copy of a stipulated record you must prepare an appendix to accompany each appellant brief. The appendix must include a copy of the notice of appeal, order on appeal and which ever pages you are citing to support your argument. Your appendix must have a table of contents and be numbered in a single consecutive series (A1, A2, A3 etc.). Samples have been enclosed.

Additionally, there is a $315.00 filing fee due upon the filing of the record on appeal.

Very truly yours,

Kimberly E. Burns
Appellate Court Clerk

cc: Kathleen Arnold, Esq.

Exhibit a

State of New York
Supreme Court, Appellate Division
Third Judicial Department
P.O. Box 7288, Capital Station
Albany, NY 12224-0288

Robert D. Mayberger
Clerk of the Court

(518) 471-4777
fax (518) 471-4750
http://www.nycourts.gov/ad3

Erica Putnam Little
Managing Attorney

December 19, 2016

Thomas Glass
3 Millpaint Lane
Apt. 1C
Owings Mills, MD 21117

Re: #522967 – Matter of Glass v NYS Dept. of Motor Vehicle

Dear Mr. Glass:

This will acknowledge receipt of an original and nine copies of your appellant's brief and appendix. Please be advised, before this matter will be placed on a term of the court it is necessary for you to file a single copy of a stipulated record on appeal. It also necessary for you to request an extension of time to perfect the appeal pursuant to section 800.12, setting forth both a reasonable excuse for the delay and facts showing merit to the appeal. There is a filing fee of $315.00 due upon the filing of the stipulated record on appeal.

Enclosed for your convenience are motion forms and a copy of my letter of June 1st will instructions on preparing a record on appeal. If you would like your appellant's brief and appendix returned to you, please advise this office.

Very truly yours,

Kimberly E. Burns
Appellate Court Clerk

cc: Kathleen Arnold, Esq.

Exhibit 6

Part 800

Rules of Practice

Section

800.l	Court sessions; four justices present
800.2	Motions; special proceedings; stays
800.3	Applications to a justice for leave to appeal to Appellate Division or Court of Appeals
800.4	Alternative methods of prosecuting appeals and review proceedings
800.5	Record on appeal or review
800.6	Transcript
800.7	Certification of record
800.8	Form and content of brief and appendix
800.9	Filing and service of papers
800.10	Oral argument
800.11	Day calendar assignments; adjournments; additions
800.12	Appeals and proceedings deemed abandoned
800.13	Appeals from family court
800.14	Appeals in criminal cases
800.15	Appeals from orders concerning grand jury reports
800.16	Appeals in election cases
800.17	Unemployment insurance appeals
800.18	Workers' compensation appeals
800.19	Transferred proceedings
800.20	State human rights proceedings
800.21	Action on submitted facts
800.22	Orders; settlement; costs
800.23	Fees of the Clerk of the Court
800.24-a	Pre-calendar Statement for Civil Appeals
800.24-b	Civil Appeals Settlement Program

ExhibIT C

transcript and, when the appendix method of appeal is used, the ribbon copy, or a copy of equal quality, shall be included in the single-copy record on appeal for use by the parties and the court.

(b) Form. Court reporters and stenographers who report administrative agency hearings shall furnish transcripts on 11 by 8-1/2-inch white, opaque paper of good quality. Pages shall contain page headings as required for appendixes by CPLR 5529(c). The transcript shall be prefaced with a table of contents showing the location of direct, cross and redirect examination of witnesses; motions for dismissal; the jury charge; the verdict and motions addressed to it; and the admission of exhibits in evidence, with a brief description of each. (c) Settlement of transcript. A transcript shall be stipulated to by the parties or settled in the manner provided by CPLR 5525(c).

Section 800.7 Certification of record.

(a) Reproduced full record. A reproduced full record shall be certified either by (1) a certificate of appellant's or petitioner's attorney pursuant to CPLR 2105, (2) a certificate of the proper clerk, or (3) a stipulation in lieu of certification pursuant to CPLR 5532. The reproduced copy containing the signed certification or stipulation shall be marked "Original Record". When a record contains a transcript, it shall be settled in the manner provided in section 800.6(c) of this Part.

(b) Single copy of record. When the appendix method is used, the single copy of the record must be stipulated to by the parties or, if the parties are unable to stipulate, settled by the judge before whom the proceedings were held. The procedure for settlement of a single copy record shall be in the manner provided by CPLR 5525(c), except that, if respondent shall fail to make any proposed amendments or objections to the record within twenty days after service of it upon respondent, the record, certified as correct by appellant's or petitioner's attorney, shall be deemed correct and may be filed with an affirmation by counsel certifying to compliance with the requirements of this section and the lack of proposed amendments or objections by repondent.

(c) Attorney for the Child. Upon any appeal in which an attorney for the child appears for a non-appellant child, the provisions of this section permitting or requiring respondent to stipulate to the record on appeal shall also apply to and include the attorney for the child.

State of New York

Court of Appeals

Decided and Entered on the twenty-third day of February, 2016

Present, Hon. Janet DiFiore, *Chief Judge, presiding.*

SSD 13
In the Matter of Thomas Glass,
Appellant,
v.
New York State Department of
Motor Vehicles Appeals Board,
Respondent.

Appellant having appealed to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the appeal is transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

John P. Asiello
Clerk of the Court

Exhibit d

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

BARBARA D. UNDERWOOD
SOLICITOR GENERAL

Telephone (518) 776-2032

April 4, 2016

Mr. Thomas Glass
3 Millpaint Lane, Apt. 1C
Owings Mills, MD 21117

Re: Matter of Glass v. NYS Dept. of Motor Vehicles Appeals Bd.
Albany County Index No. 5330-15

Dear Mr. Glass:

I write to confirm the telephone conversation we just had with my supervisor, Deputy Solicitor General Andrea Oser, explaining why our office is unable to stipulate to a proposed record for your appeal.

We understand that you are seeking to appeal the decision and order of Supreme Court, Albany County, denying your motion to extend the statute of limitations to commence a C.P.L.R. article 78 proceeding so that you may challenge a determination of the Department of Motor Vehicles dated August 17, 2015. As we explained, because your motion was submitted ex parte and was never served on either the Department of Motor Vehicles or the Attorney General as the Department's counsel, the Department never appeared as a party to that motion and is therefore not a party to your appeal. For that reason, the Department is unable to stipulate to a proposed record for your appeal.

We also explained, however, that at the end of its order, Supreme Court listed the papers considered. The record for your appeal therefore consist of those papers together with Supreme Court's order and any papers filed in connection with your efforts to appeal that order. We hope this is helpful.

Very truly yours,

KATHLEEN M. ARNOLD
Assistant Solicitor General

Exhibit e

STATE OF NEW YORK
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, BRUCE A. HIDLEY, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy Affidavit in Support...... with the original thereof filed in this office on the ....4th........ Day of December 2015. and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this ....22nd............ day of ...November........ 2016.

.... Clerk

STATE OF NEW YORK
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, BRUCE A. HIDLEY, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy Motion...................... with the original thereof filed in this office on the ......4th.......... Day of December.. 2015 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this ....22nd.......... day of ...November........ 2016

.... Clerk

STATE OF NEW YORK
COUNTY OF ALBANY CLERK'S OFFICE } ss.:

I, BRUCE A. HIDLEY, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy ....Complaint........... with the original thereof filed in this office on the ....4th.......... Day of ..December 2015 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this ....22nd.......... day of ......November..... 2016

.... Clerk

Exhibit f